

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

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**IN THE MATTER OF:**

**ELITE FUEL EIGHT, INC.,  
IOWA GAS GROUP, INC.,  
SEKON BROTHERS LLC  
AND  
ISH OBEROI, INDIVIDUALLY**

**ADMINISTRATIVE ORDER  
NO. 2010-UT- 12**

**UST NO. 198608399, Order No. 2010-UT-  
2825 Easton Blvd., Des Moines, IA,**

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**To: Elite Fuel Eight, Inc.  
Reg. Agent, Ish Oberoi  
340 N. Lafayette St.  
Macomb, IL 61455**

**Ish Oberoi  
438 New York Ln.  
Elk Grove Village, IL 60007**

**Ish Oberoi  
Elite Fuel Eight, Inc.  
9 Elk Run Rd.  
Waterloo, IA 50703**

**Iowa Gas Group, Inc.  
Reg. Agent, Shital N. Mehta  
438 New York Lane  
Elk Grove Village, IL 60007**

**Sekhon Brothers LLC  
404 S. 11<sup>Th</sup> Ave. W  
Newton, IA 50208**

**I. SUMMARY**

This administrative order (order) requires you to pay an administrative penalty of \$6,560 within 60 days of receipt unless the order is appealed as provided in Division VII below. The penalty is assessed for operating underground storage tanks (USTS) at the referenced facility without an approved form of financial responsibility, failure to maintain continuous financial responsibility and other UST regulatory violations.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**  
Paul Nelson, Environmental Specialist  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8779

**Relating to legal issues:**  
Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/242-5817

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**II. JURISDICTION**

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in Chapter 567 Iowa Administrative Code (IAC) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

**III. STATEMENT OF FACTS**

1. Kum & Go, LLC transferred ownership of the property located at 2825 Easton Blvd., Des Moines, Iowa to Iowa Gas Group, Inc. (Iowa Gas) by deed recorded on November 28, 2007. Iowa Gas transferred ownership of the same property to Elite Fuel Eight, Inc. (Elite Fuel 8) by deed recorded on December 28, 2007.
2. Elite Fuel 8 is an Illinois corporation doing business in Iowa. Elite Fuel 8 is not registered with the Iowa Secretary of State. Ish Oberoi is president of Elite Fuel 8 and upon information and belief a principal stockholder. Ish Oberoi is also the president and upon information and belief the principal stockholder in a number of affiliated companies, namely; Elite Fuel One, Inc., Elite Fuel Two, Inc., Elite Fuel Three, Inc., Elite Fuel Four, Inc., Elite Fuel Five, Inc., Elite Fuel Six, Inc. and Elite Fuel Seven, Inc. all of which are Illinois companies registered with the Iowa Secretary of State and doing business in Iowa. Upon information and belief, all of these corporations have owned or operated UST facilities.
3. Iowa Gas registered with the Department as the owner of petroleum USTS at 2825 Easton Blvd. on Department form 148 dated November 27, 2007. Paul Ghuman identified himself as the authorized representative of Iowa Gas. Paul Ghuman is president of Iowa Gas and upon information and belief a principal stockholder. On April 7, 2008, the Department received an annual tank management fee invoice which identified Iowa Gas as both the property and UST owner and did not identify a separate entity in the capacity of an UST operator.
4. There are two 10,000 gallon petroleum USTS located at the 2825 Easton Blvd., Des Moines, Iowa facility.
5. At all times relevant to this order, Ish Oberoi has been the person in control of, or having responsibility for, the daily operation of the USTS at this location. He has been the primary contact person responsible for maintaining compliance with the regulatory requirements as stated in this order.
6. PMMIC, an UST insurance company, issued an insurance policy covering USTS at this location. The certificate of insurance identified Iowa Gas as a named insured with effective dates of July 26, 2007 to July 25, 2008. PMMIC also issued a certificate of insurance with the same policy number identifying "Elite Fuel Eight, Inc." as the named insured and Ish Oberoi as an "additional

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insured" with effective dates of July 26, 2007 to July 25, 2008. PMMIC issued a final notice of cancellation of the policy with a cancellation date of July 25, 2008. A PMMIC policy was issued to "Elite Fuel Eight, Inc." as the named insured with effective dates of November 10, 2008 to November 9, 2009. PMMIC cancelled the policy effective November 9, 2009 due to non-renewal. There was a lapse of UST insurance covering the USTS at this location from July 25, 2008 until November 10, 2008.

7. The Department conducted a site inspection on May 20, 2008. The inspector required the site owner/operator to attach the 2008-2009 registration tags, submit records, install interstitial probes, and clean out the spill buckets.

8. The Department issued a notice of violation (NOV) dated June 4, 2008 to Ish Oberoi of Elite Fuel 8 which included a report of the prior facility inspection. The notice required the UST owner/operator to (1) affix 2008-2009 registration tags to the tanks; (2) submit release detection records for the past 12 months; (3) submit records of the last line tightness test and mechanical line leak detector tests; and (4) install interstitial probes to the tank secondary containment system. The NOV required these documents to be submitted no later than July 11, 2008. The records were not produced.

9. After receiving notice that the PMMIC policy had been cancelled effective July 25, 2008, the Department sent a letter to Ish Oberoi??? Paul Ghuman, Elite Fuel 8, notifying him that he must cease operation of the USTS and that it is illegal to accept fuel into tanks without proof of financial responsibility. The notice required submittal of proof of insurance.

10. The Department conducted a site visit on October 1, 2008. The inspector determined that the annual tank tags had not been affixed to the USTS. The inspector removed the permanent tank tags. The inspector observed that the facility was selling fuel and determined that the fuel delivery company, Randolph's, Inc., had made deliveries after the PMMIC cancellation date of July 25, 2008. One of the fuel dispensers, "dispenser #2", was bagged and marked as "out of order".

11. By letter dated October 1, 2008, the Department authorized a one-time delivery of fuel sufficient to perform a tightness test on the USTS.

12. On October 10, 2008, an UST system testing company, Tanknology Inc. (Tanknology), notified the Department field office that they had discovered a line leak in the regular grade fuel line and 7 inches of product in the submersible turbine pump (STP) sump pit.

13. The Department field office inspector re-visited the site on December 18, 2008. The inspector removed tank tags from the USTS. The inspector determined that Tanknology had conducted tests but was unable to obtain the results from the store manager or Ish Oberoi. The inspector eventually obtained UST system test results directly from Tanknology later in December 2008. The results showed that the two USTs were tightness tested on October 10, 2008 and passed and the super grade line and leak detector were tested and passed. However, the Tanknology report indicated that the regular grade fuel line failed and a leak was observed near the submersible turbine pump (STP) and about 7 inches of product was located in the STP sump pit. The

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Tanknology report documented that the regular line and leak detector were re-tested on October 17, 2008 and passed although there was no documentation that the leak was repaired.

14. On December 5, 2008, the Department authorized fuel delivery to this facility on the condition tank tags would be picked up that day.

15. The Department field office conducted a facility inspection on February 17, 2009. The inspector issued a NOV dated February 26, 2009 noting the following violations: (1) annual tank fee tags and permanent tags were not affixed to the fillpipes; (2) the spill bucket for the regular unleaded gasoline UST had 3 inches of water in it; and (3) the submersible turbine pump (STP) had a foot of water in it. The NOV required Elite Fuel 8 to remedy the violations by March 10, 2009.

16. Annual tank management fees were not paid by January 15, 2009 or the final due date of March 31, 2009. Tank management fees of \$130 and \$500 in late fees were paid on April 8, 2009.

17. The Department sent a notice dated December 10, 2009 to Elite Fuel 8 stating the PMMIC insurance policy had been cancelled effective November 9, 2009 and directing the owner/operator to cease operation of the USTS immediately.

18. The Department called the facility on January 19, 2010 and spoke with the store manager, Steven Wright. Mr. Wright confirmed they were still operating the USTS and doing business as "Infinite Oil". He stated that to his knowledge the facility had been purchased or was being purchased by "Sekhon Brothers" who had been operating the USTS since sometime in 2008. The Department again notified the store manager to cease operation of the USTS and advised that the tanks may be "red tagged" to prevent future deliveries of fuel. The Department was notified by an attorney representing Sekhon Brothers LLC that they in fact purchased the property on contract from Elite Fuel 8 sometime in 2008, paid off the contract and obtained a deed. These transactions are not recorded with the Polk County recorder. According to the attorney, the Elite Fuel 8 mortgage was not satisfied and the lender is seeking foreclosure.

19. The Department received a copy of a certificate of insurance issued by Colony Insurance, Inc. covering the USTS at this location. The policy identified Sekhon Brothers LLC as the named insured. The policy had an effective date of February 16, 2010 to February 16, 2011. There was a lapse in UST insurance coverage from November 9, 2009 until February 16, 2010. The Department has yet to receive a change of ownership identifying Sekhon Brothers LLC as an UST owner or operator.

20. Sekhon Brothers LLC is a Iowa limited liability company. Sekhon Brothers LLC operated the USTS at this location from at least November 2009 and is currently operating the USTS.

**CONCLUSIONS OF LAW**

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTS constitutes a threat to the public health and safety and to the natural

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resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules in chapters 567 IAC 135 and 136. The Director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).

2. Iowa Code section 455B.471(6) defines "owner" of USTS. Iowa Gas registered as the owner of the USTS at this location even after the property title transferred to Elite Fuel 8. Until documentation is provided to confirm UST ownership, Iowa Gas and Elite Fuel 8 are owners as defined at all times relevant to the violations cited in this order and therefore responsible for compliance with the applicable terms of this order.

3. Iowa Code section 455B.471(5) defines an "operator" of USTS as "... a person in control of, or having responsibility for, the daily operation of the underground storage tank." Elite Fuel 8 operated the USTS systems at all times relevant to this order. Ish Oberoi in his capacity as president of Elite Fuel 8 was the primary person having control of the daily operation and regulatory compliance of the UST system. Sekhon Brothers LLC operated the USTS from at least November 2009 and is currently operating the USTS. Elite Fuel 8, Ish Oberoi and Sekhon Brothers LLC are operators as defined and responsible for compliance with the applicable terms of this order.

4. Owners and operators of USTS must maintain an approved financial assurance mechanism continuously until the tanks are permanently closed. See generally chapter 567 IAC 136, and 567 IAC 136.22. If insurance is the financial responsibility mechanism, owners and operators must obtain and provide proof of insurance using a certificate of insurance or endorsement the content of which is specified in 567 IAC 136.8.

5. All owners and operators are required to maintain records documenting proof of an approved form of financial responsibility. 567 IAC 136.20. They must submit proof of financial responsibility to the Department upon request. 567 IAC 136.19.

**FINANCIAL RESPONSIBILITY VIOLATIONS**

6. Iowa Gas, Elite Fuel 8, and Ish Oberoi are jointly and severally responsible for operating USTS at this location after the PMMIC insurance cancellation date of July 25, 2008 and for failure to maintain continuous financial responsibility on the USTS after the July 25, 2008 cancellation.

7. Iowa Gas and Elite Fuel 8 as owners and Sekhon Brothers LLC as an operator are responsible for operating the USTS at this location between the PMMIC cancellation date of November 9, 2009 until the Colony Insurance, Inc. policy took effect on February 16, 2010. They are jointly and severally responsible for failure to maintain continuous coverage after the November 9, 2009 PMMIC cancellation.

**OTHER UST VIOLATIONS**

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8. Commission rules require owners and operators to maintain leak detection records for the past 12 months, affix annual tank tags to the tank fillpipes, maintain records on site or at an alternative location and submit them within two business days or an alternative date when requested by the Department. See 567 IAC 135.4(5), 135.5(6), and 135.3(5). It is illegal to deposit or accept fuel into USTS that have not been issued and do not display tank tags. 567 IAC 135.3(3)(j) Secondary containment leak detection systems must be designed, constructed and installed so that the interstitial space can be effectively monitored to detect a release. See 567 IAC 135.5(4)(g)

9. Elite Fuel 8, Ish Oberoi and Iowa Gas are responsible for failure to remedy the violations noted in the July 2008 Department inspection including; (1) affix 2008-2009 registration tags to the tanks; (2) submit release detection records for the past 12 months; (3) submit records of the last line leak tightness test and mechanical leak detector tests; (4) install interstitial probes to the tank secondary containment system so they operate properly and (5) accepting fuel deposits into USTS that had not been issued annual tank management fee tags.

**V. ORDER**

THEREFORE, you are ordered to comply with the following provisions in order to redress violations:

1. Iowa Gas, Elite Fuel 8 and Ish Oberoi are jointly and severally responsible to pay an administrative penalty of \$6,560 to the order of the Iowa Department of Natural Resources within sixty (60) days of receipt of this order unless the order is appealed as provided in Division VII below.

2. Sekhon Brothers LLC is jointly and severally responsible to pay \$2,240 of the total \$6,560 assessment. Payment shall be to the order of the Iowa Department of Natural Resources within sixty (60) days of receipt of this order unless the order is appealed as provided in Division VII below.

**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violation of the type cited in this order.

2. Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to chapter 455B. 567 IAC chapter 10 was adopted by the Commission to implement this provision. Pursuant to rule 567 IAC 10.2, the Department has determined that a penalty should be assessed. The administrative penalty is determined as follows. The Department reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification.

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**ECONOMIC BENEFIT:** Iowa Gas, Elite Fuel 8 and Ish Oberoi owned or operated the USTS after the PMMIC cancellation date of July 25, 2008 and again after the PMMIC cancellation date of November 9, 2009. Sekhon Brothers LLC also operated the USTS after the PMMIC cancellation date of November 9, 2009. In addition, Elite Fuel 8 and Ish Oberoi allowed the PMMIC policy to lapse after July 25, 2008 creating a gap in continuous coverage until the policy was reinstated effective November 10, 2008. Iowa Gas, Elite Fuel 8, Ish Oberoi and Sekhon Brothers LLC also failed to maintain continuous coverage after the PMMIC cancellation date of November 10, 2009 until coverage with Colony Insurance, Inc. was established effective February 16, 2010. These parties have gained an economic benefit represented by the avoided costs of paying continuous insurance premiums. The total months of lapsed coverage is about 7 months. Assuming an annual premium for two USTS of \$1,000 or about \$80 per month, the avoided cost is estimated to be \$560. Sekhon Brothers Inc. is only responsible for a 3 month lapse or \$240.

**GRAVITY:** Operating without financial responsibility creates a risk that a release from the USTS system would not have financial assurance to cover the costs of corrective action and third party liability. Maintaining continuous coverage on UST systems even when the system is not being operated creates a risk that coverage for a release discovered during a period of non-coverage would be denied. In addition to the financial responsibility violations, there were record-keeping violations for tank and line leak prevention testing identified during the Department's 2008 inspection. Although these violations could constitute separate violations for which a penalty could be assessed up to \$3,000, the Department is assessing \$3,000 for the combined violations. For this factor, \$3,000 is assessed to Iowa Gas, Elite Fuel 8 and Ish Oberoi. Sekhon Brothers LLC is jointly and severally responsible to pay \$1,000 of the total \$3,000 assessment for the financial responsibility violation after the PMMIC November 9, 2009 cancellation date.

**CULPABILITY:** Iowa Gas, Elite Fuel 8 and Ish Oberoi, own and operate numerous UST facilities in Iowa and other states and should be aware of the financial responsibility requirements. They continued to accept fuel and operate the USTS knowing the PMMIC insurance had been cancelled, allowed it to expire mid-term and attempted to obtain further deliveries of fuel despite written directives that to do so was illegal. Department rules allow a maximum assessment of up to \$3,000. For this factor, \$3,000 is assessed against Iowa Gas, Elite Fuel 8 and Ish Oberoi. Sekhon Brothers LLC is jointly and severally responsible to pay \$1,000 of the total \$3,000 assessment for the lapse of coverage after November 9, 2009 in their capacity as an operator.

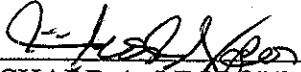
## **VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.476, and chapter 567 IAC 7 which adopts by reference chapter 561 IAC 7, the named parties may file a written notice of appeal to the Commission within 30 days of receipt of this order. The party should file this notice of appeal with the Director of the Department, and must identify the specific portion or portions of this order subject to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to Iowa Code chapter 17A and chapter 567 IAC 7.

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**VIII. NONCOMPLIANCE**

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477. The Department reserves the right to request that the Attorney General initiate legal action based on the violation alleged in this order, as well as any subsequent violations in the event the party violates the order, including failure to timely pay any penalty. Satisfaction language?

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of  
June, 2010

Copies to: Named parties, D. Wornson, E. Douskey, FO 5, V. (I)